

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DANTE B. MAGDALUYO, JR.,

Plaintiffs,

vs.

MGM GRAND HOTEL, LLC,

Defendants.

Case No. 2:14-cv-1806-RFB-GWF

ORDER

Application to Proceed in Forma
Pauperis (#1)

This matter comes before the Court on Plaintiff's Application to Proceed in Forma Pauperis (#2), filed on October 29, 2014. Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court. The court may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement showing the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1). The standard in 28 U.S.C. § 1915(a)(1) for in forma pauperis eligibility is "unable to pay such fees or give security therefor." Determination of what constitutes "unable to pay" or unable to "give security therefor" and, therefore whether to allow a plaintiff to proceed in forma pauperis, is left to the discretion of the presiding judge, based on the information submitted by the plaintiff or plaintiffs. *See, e.g., Fridman v. City of New York*, 195 F.Supp.2d 534, 536 (S.D.N.Y.), *aff'd*, 52 Fed.Appx. 157 (2nd Cir. 2002).

The Plaintiff represents that he earns \$56,000 per year in take-home pay. He has \$20.00 in a checking or savings account. His assets include a \$20,000 401K plan and a 2013 Honda CRV. His monthly expenses include: \$1,370 for mortgage, \$215 for auto insurance, \$368 in utilities, and

1 other payments, including loans, worth \$1,800. He supports two others, David and Christiane
2 Magdaluyo, with \$5,000 per year. Further debts include his payments on his Honda for \$399.51,
3 ADT payments of \$47, an Amerisave mortgage of \$1,364.26, a Bank of America card for \$1,200, a
4 Chase Amazon card of \$49.99, and a Synchrony card for \$50.00.

5 Based on the financial information provided, the Court finds that Plaintiff has the ability to
6 pay the fees associated with bringing this action. Accordingly, upon consideration of the financial
7 information provided, and to maintain the integrity of the indigent request process,

8 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed in Forma Pauperis
9 (#1) is **denied** without prejudice.

10 **IT IS FURTHER ORDERED** that the Plaintiff will pay the \$350.00 filing fee and \$50.00
11 administrative fee for a civil action within **thirty (30) days** of this order.

12 **IT IS FURTHER ORDERED** that if the Plaintiff does not timely comply with this order,
13 dismissal of the action may result.

14 DATED this 18th day of February, 2015.

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17 GEORGE FOLEY, JR.
18 United States Magistrate Judge
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